

**BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES**

383 KENNETH MAHN HALL OF ADMINISTRATION / LOS ANGELES, CALIFORNIA 90012

MEMBERS OF THE BOARDGLORIA MOLINA
YVONNE BRATHWAITE BURKE
ZEV YAROSLAVSKY
DON KNABE
MICHAEL D. ANTONOVICHVIOLET VARONA-LUKENS, EXECUTIVE OFFICER
(213) 974-1411

March 5, 2003

Karen Getman, Chairman
Fair Political Practices Commission
428 "J" Street
Sacramento, California 95814-2329

Dear Chairman Getman:

**Proposed Regulation 18754 - Statements of Economic Interests
(Members of Boards or Commissions of Newly Created Agencies):
When and Where to File
Item 5 - Agenda of March 7, 2003**

This letter is in regard to proposed Regulation 18754, which appears as Item 5 on the agenda of your Commission's meeting of March 7, 2003. I would like to commend the Commission staff, most particularly Kenneth Glick, in drafting this Regulation which interprets SB 1620 (Ch. 264 of 2002). I appreciate this opportunity to provide my input regarding the Regulation.

I would like to make it clear that the opinions contained in this letter are those of the Office of the Clerk of the Board of Supervisors of Los Angeles County. I do not speak for the Los Angeles County Board of Supervisors.

I also should preface my remarks by saying that one of the aims of the staff of our office is to ensure that public agencies and officials in Los Angeles County comply with the economic disclosure provisions of the Political Reform Act. We take our responsibilities as filing officer and code review staff seriously.

The staff of the Executive Office conducts detailed review and analysis of conflict of interest codes submitted, pursuant to Government Code Section 82011¹, to the Board of Supervisors in its capacity as code reviewing body for the codes of some 265 public agencies within the County of Los Angeles. The clerk's office also functions as the filing officer for administrative heads and members of governing bodies of these agencies. In these dual capacities, our office makes the recommendations discussed below with respect to the proposed Regulation.

¹ All statutory references in this letter are to the California Government Code.

Karen Getman, Chairman

March 5, 2003

Page 2

Applicability

Decision 2: I recommend that the language in (a)(2) that is subject to Decision 2 be retained. This language would apply the provisions of the Regulation to only those agencies created on or after January 1, 2003.

Commission staff maintains that applying the provisions of Regulation 18754 and Section 87302.6 would not constitute an impermissible retroactive application of the statute. However, the meaning of the phrase "newly created" is clear in the context of Section 87302.6. I do not believe that the Legislature intended the statute to be applied to agencies created at some point in time prior to its enactment. To assume otherwise would, first of all, ignore the plain language of the statute and, secondly, it would certainly raise a question of when is an agency considered no longer to be "newly created" for purposes of its application: three months? six months? a year?

It is also for practical reasons that I recommend that the Commission not apply the Regulation to agencies that were created before January 1, 2003. I anticipate that any notice that our office might send to affected agencies that are currently in the code adoption and approval process would create needless confusion.

I see the application of Regulation 18754 to these agencies as unnecessary because of two points: One, officials of a new agency, including but not limited to members of governing boards and commissions, would be subject to the disqualification provisions of the act, regardless of whether a conflict of interest code is in place; and two, the urgent need for disclosure by officials of such agencies would soon be satisfied without the Regulation, because the individuals who would be "designated employees" of the agency would soon file a statement of economic interests anyway.

Exceptions

I am very glad to see the language drafted by your staff that deals with exceptions, particularly (a)(3)(B), which would exempt from disclosure members of a board or commission that does not possess decision making authority, as defined in Reg. 18701(a)(1). In providing this exception, Regulation 18754 would resolve one of the major problems that our statewide association -- the California Association of Clerks and Elections Officials -- identified in SB 1620 when the bill was before the Legislature.

One might interpret Section 87302.6 that members of any board or commission of a newly created agency would be required to make full disclosure, even if the members were never made subject to the provisions of a conflict of interest code because they do not possess the decision making authority defined in Reg. 18701. The language of Regulation 18754 would prevent such absurd situations from arising.

Karen Getman, Chairman

March 5, 2003

Page 3

Where to file

Decision 3, Option b. Our office strongly supports the staff's proposed language contained in subsection (c), option b. This option would provide that affected members of governing boards or commissions of newly created agencies shall file statements of economic interests with their newly created agency or with the code reviewing body, as provided by the code reviewing body.

Option b is consistent with current law and practice at the local level. It is the code reviewing body that determines where an official's statement of economic interest is to be filed. Preserving this administrative scheme will reduce confusion at the local level with respect to the issue of where to file statements that are subject to the proposed Regulation.

Further, although a literal reading of Section 87302.6 might lead one to believe that the Legislature intended members of affected boards and commissions to file their statements of economic interests with the Commission, I don't think that anyone really believes that that is what the Legislature intended. This would create a rather absurd procedure where, temporarily, individuals would file statements in Sacramento, and then file locally, as directed by the local code reviewing body, once the code has been approved. Local code reviewing bodies are often not informed of the creation of new agencies, especially newly created joint powers authorities in which the code reviewing body is not a participating agency. The likelihood of the FPPC being informed of the creation of such agencies, and then successfully obtaining the statements of economic interests timely is even more problematic. Therefore, Decision 3, Option a should be rejected.

I would like to congratulate your staff members for the work they have done on this Regulation. On its face, Section 87302.6 looks like a simple, straight forward statute to implement. It isn't. As indicated by the several decision points contained in the proposed Regulation, there are a number of issues that the Legislature may not have contemplated as SB 1620 worked its way through the legislative process. Again, I appreciate the opportunities you and your staff have given me to provide my input while they drafted the language of the Regulation. I look forward to discussing this issue at your meeting on March 7.

Very truly yours,



John McKibben
Deputy Executive Officer

c: Chief Administrative Office,
Intergovernmental Relations Branch